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VIA ECF

The Honorable Robert W. Sweet
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Spinelli et al. v. National Football League et al.*, No. 13-cv-7398 (RWS)

Dear Judge Sweet:

We submit this letter brief, on behalf of Defendant The Associated Press ("AP"), regarding the Court's two orders of today. The first order (Dkt. 219), set an April 5, 2017 oral argument on Plaintiffs' motion to stay AP's and its co-Defendants' attorney's fees motions, and provided that "[n]o papers need to be filed regarding the fees motion until the motion for a stay is resolved." The second order (Dkt. 220) set Plaintiffs' motion for sanctions for oral argument on April 19, 2017.

We respectfully submit that the Court should modify its orders to permit the parties to orally argue the Defendants' fees motions at the April 5, 2017 hearing, and in any event should hear argument on the fees motions prior to deciding whether to hear argument on Plaintiffs' sanctions motion.

First, the Court may not be aware that all papers on the Defendants' fees motions have already been filed. Plaintiffs filed their opposition brief to the fees motions on March 22, 2017 (Dkt. 211). Defendant AP filed its reply brief on fees (combined with its brief in opposition to Plaintiffs' sanctions motion) on March 29, 2017 (Dkt. 216); the NFL Defendants filed their reply brief on fees (combined with their brief in opposition to Plaintiffs' sanctions motion) on the same date (Dkt. 217); and defendant Replay Photos, LLC filed its reply brief on fees (combined with its brief in opposition to Plaintiffs' sanctions motion) on the same date (Dkt. 218). The Court either has or will shortly receive courtesy copies of these briefs. Any reply brief by Plaintiff in support of its sanctions motion will be due by April 5, 2017.

The parties are therefore fully prepared to argue the substance of the fees motions at the April 5, 2017 hearing. AP believes that it would be more efficient for the Court to hear argument on the fees motions immediately following argument on Plaintiffs' request for a stay. This would permit the Court, if it decides that a stay is unwarranted, to proceed directly to a decision on Defendants' entitlement to fees. As noted in the Advisory Committee on Rules Notes to Rule 54, this is a preferred option for fees motions, since "[p]rompt filing affords an opportunity for

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the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind. It also enables the court in appropriate circumstances to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits of the case."

Second, the theory behind Plaintiffs' sanctions motion is that Defendants' fees motions are so frivolous that Rule 11 sanctions should be imposed. The Plaintiffs bear a very high burden on such a motion: "[T]he operative question is whether the argument is frivolous, i.e., the legal position has no chance of success, and there is no reasonable argument to extend, modify or reverse the law as it stands.'" *Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory Ltd.,* 682 F.3d 170, 177 (2d Cir. 2012) (quoting *Fishoff v. Coty Inc*., 634 F.3d 647, 654 (2d Cir. 2011)) (internal quotation marks omitted); *see also Goldblatt v. Englander Commc'ns, L.L.C*., 06 Civ. 3208 (RWS), 2007 WL 148699, at *7 (S.D.N.Y. Jan. 22, 2007).

The Court cannot properly decide the operative sanctions question – whether the fees motions are frivolous – without first allowing merits argument on the fees motions themselves. Moreover, the Court may well conclude after hearing argument on the fees motion that Plaintiffs have no chance of carrying their burden on sanctions, and that oral argument on the sanctions motion is therefore not necessary.

AP therefore requests that the Court amend its recent orders to provide that both the Plaintiffs' stay motion and the Defendants' fees motion will be argued on April 5, 2017, and that the Court will determine at the close of that argument whether it is necessary to hear argument on Plaintiffs' sanctions motion.

Respectfully submitted,

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By:______________________
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